TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~358~~ 129

GEORGE CRILLEY, APPELLANT,

vs.

ROSWELL S. BURROWS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

FILED OCTOBER, 26, 1871.

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a Pleas in the circuit court of the United States for the district of Iowa, at a term thereof begun and holden at the United States court-house in the city of Des Moines, in said district, on the second Tuesday, the ninth day of May, A. D. 1871, before the Honorable Samuel F. Miller, justice of the United States Supreme Court, and the Honorable John F. Dillon, judge of the United States circuit court for the eighth circuit, on Monday, the fifteenth day of May, in the year of our Lord one thousand eight hundred and seventy-one, and in the ninety-fifth year of the independence of the United States.

b Be it remembered that, heretofore, to wit, on the 9th day of January, A. D. 1869, came Roswell S. Burrows, by his solicitors, Nourse & Kauffman, and filed in the clerk's office of the United States circuit court for the district of Iowa, a transcript of the record and papers from the district court of Webster County, Iowa, in a certain cause wherein said Roswell S. Burrows is complainant, and George Crilley is defendant, which said transcript is in the words and figures following, to wit:

1 ROSWELL S. BURROWS
vs.
GEORGE CRILLEY.

I, W. Lumpkin, clerk of the district court of Webster County, State of Iowa, do hereby certify that the foregoing transcript contains a true and complete copy of all the pleadings, papers, motions, and record entries in said cause, and that all the costs of this cause, to wit, the sum of $4 30, have been paid by plaintiff.

Witness my hand and the seal of the district court of Webster County, State of Iowa, this 17' day of October, 1868.

[SEAL.] W. LUMPKINS,
Clerk D. C.

2 October term, 1st day, Oct. 12th, 1868.

ROSWELL S. BURROWS
vs.
GEORGE CRILLEY. } No. 260. Ch'y.

And now, on this day, comes the plaintiff, by att'y, C. C. Nourse, per Kauffman, and files for a change of forum to the circuit court of the United States his affidavit and petition, and presents his bond for the approval of the court.

Oct. term, 4th day, Oct. 15, '68.

ROSWELL S. BURROWS
vs.
GEORGE CRILLEY.

And now, on this day, comes the plaintiff, by his att'y, C. C. Nourse, per B. F. Kauffman, and the defendant, by his att'ys C. B. Richards & Parsons; and, the cause coming on to be heard, on the motion for a change of forum, and the court being fully advised in the premises, said motion was overruled by the court, to which the plaintiff duly excepts. And the plaintiff files an amended affidavit herein.

3 Oct. term, 5th day, Oct. 16th, 1868.

ROSWELL S. BURROWS
vs.
GEORGE CRILLEY. } No. 260. Ch'y.

And now, this cause coming on to be heard on the petition and affidavit for change of forum to the jurisdiction of the circuit court of the United States for the district of Iowa, and the court, being fully advised in the premises, approves the bond presented and orders that the prayer of petition be granted in accordance with stipulation now on file.

4 In the district court of Webster County, Iowa, October term, A. D. 1868.

ROSWELL S. BURROWS, PLAINTIFF,
against
GEORGE CRILLEY, DEFENDANT.

To said defendant:

You are hereby notified that, on or before the 30th day of September, A. D. 1868, there will be on file in the office of the clerk of the district court of Webster County, Iowa, the petition of Roswell S. Burrows, the plaintiff in this action, claiming of you that his title to the southeast quarter (¼) of section number twenty-nine, (29,) township eighty-nine, (89,) range twenty-eight (28) west 5th p. m., be quieted; and that all patents, deeds, certificates of pre-emption, tax-titles, and other instruments in writing, under which you claim title thereto, or an interest therein, be canceled and set aside, and declared of no effect or validity; and that the title of the said plaintiff therein and thereto be confirmed, and, for other relief. You are also notified that, unless you appear ther'to
5 and defend, before noon of the second day of the term of the said district court of Webster County, to be held on the 2d Monday, in October, A. D. 1868, a default will be entered against you, and judgement rendered thereon, as prayed in said petition.

(Signed) FINCH & RIVERS,
Attorneys for Plaintiff.

(Endorsed as follows:)

Original notice. Roswell S. Burrows vs. George Crilley. This notice came into my hands on the 29 day of April, 1868, and I certify that I personally served the same on the within-named George Crilley, by reading the same to him, and delivering him a copy of the same in Fort Dodge, Webster County, Iowa, on the 20' day of June, 1868.

JACOB WALZ,
Sheriff of Webster County, Iowa.

Fees: Service, 50; mileage, 30; copy, 25.—Total, $1 05.

6 In the district court of Webster County, State of Iowa.

R. S. BURROWS
vs.
GEORGE CRILLEY.

To the district court of Webster Co., State of Iowa:

Your petitioner, Roswell S. Burrows, complaining of the defendant,

George Crilley, shows to the court that your petitioner is the owner and has the title to the following real estate, situate in Webster County, State of Iowa, to wit, the southeast quarter of section No. 29, township 89 north, of range No. 28 west of the 5th p. m.

Your petitioner further shows that said real estate is of the value of sixteen hundred dollars, and that said defendant has and holds adverse possession of said real estate, and claims title thereto adversely
7 to the petitioner, and refuses to surrender the same, which said possession of defendant is wrongful, and said pretended title is fraudulent and void.

Petitioner further shows that the defendant has a pretended patent for said real estate, issued by the executive officers of the United States to him, but the said patent was wrongfully issued to him in violation of the laws of the United States, in this, that said tract of land, before the issueing of said patent to defendant, and the pretended purchase thereof from the United States, by said defendant, and before any settlement or pre-emption had been made thereon or thereof by defendant, had been set aside and reserved from sale by a general order of the Secretary of the Interior of the Government of the United States, and had, by such general order, been reserved from sale and set apart for a work of internal improvement, and had been certified by the proper officers of United States as a part of the Des Moines River grant, accruing to the State of Iowa by virtue of an act of Con-
8 gress granting to the State (then Territory) of Iowa certain lands for the improvement of the Des Moines River approved August 8, 1846, which said title was afterwards confirmed to the State of Iowa by joint resolution of the Congress of the United States, approved March 3, 1861, and that the State of Iowa, by deed and letters of patent, under the seal of the State of Iowa, in pursuance of an act of the general assembly authorizing such conveyance, conveyed such tract of land to the Des Moines Navigation and Railroad Company, a corporation created and existing under the general incorporation laws of the State of Iowa, and that said Des Moines Navigation and Railroad Company has deeded and conveyed said real estate to your petitioner.

Your petitioner avers that the acts of the several officers of the United States in making said pretended sale, and executing said pretended patent to defendant, were without authority of law, and that the same are void; and that the affidavits and papers, upon which said patent was allowed and issued, contained false and fraudulent
9 representations in relation to the filing of declaratory statement and settlement of said lands by defendant, and that said patent was so procured by fraud; and that the said defendant procured said false and fraudulent statements and affidavits to be made, knowing the same were false and fraudulent, with intent so fraudulently to procure a patent for said land from the officers of the United States.

Petitioner avers that the use and occupation of said land, so wrongfully possessed and withheld by defendant, is worth the sum of two hundred dollars.

Petitioner therefore prays that said pretended patent which is a cloud upon petitioner's title be canceled and set aside, and declared of no force or validity, and that petitioner be adjudged the legal owner of said real estate, and have a writ of possession therefor; and also have a decree for the value of the use and occupation, to wit, the sum of two hundred dollars, with interest and costs of suit, and such other further

and full relief as in equity and good conscience plaintiff is entitled to receive.

C. C. NOURSE,
Attorney for Plaintiff.

10 (Endorsed as follows:) R. S. Burrows vs. George Crilley. No. 260. Petition in equity. Filed Sept. 28, 1868. W. Lumpkins, clerk. C. C. Nourse, for pl'ff.

In the district court of Webster County, State of Iowa.

ROSWELL S. BURROWS }
vs. }
GEORGE CRILLEY. }

I, A. C. Bidwell, being duly sworn according to law, do make oath and say that I am agent of the plaintiff in the above-entitled cause, and am as fully acquainted with the facts herein stated as the plaintiff; that plaintiff is a non-resident of Iowa, and is not present in this State to make this affidavit. And I do further depose and say that the said
11 Roswell S. Burrows, plaintiff, was, at the time of the commencement of said suit, and ever since has been, and now is, a citizen and resident of the State of New York, and that the said George Crilley, defendant, was, at the time of the commencement of this suit, and ever since has been, and now is, a resident and citizen of the State of Iowa; that the above-entitled action is now pending in the said district court of Webster County, and the matter in dispute and controversy between the plaintiff and defendant, exceeds the sum of five hundred dollars, exclusive of costs. And affiant further states that he has reason to believe and does believe that, from prejudice and local influence, plaintiff will not be able to obtain justice in this court.

A. C. BIDWELL.

STATE OF IOWA, *Polk County, ss:*

Sworn to and subscribed before me, by A. C. Bidwell, at my office in Des Moines, this 6th day of October, 1868.

Witness my hand and notarial seal, at Des Moines, the day and year aforesaid.

[SEAL.] B. F. KAUFFMAN,
Notary Public.

12 Know all men by these presents that we, Roswell S. Burrows and W. W. Williamson, are indebted to George Crilley in the penal sum of two hundred and fifty dollars upon the following condition, to wit:

Whereas the said Roswell S. Burrows is party to a suit now pending in the district court of Webster County, State of Iowa, wherein the said Roswell S. Burrows is plaintiff, and George Crilley defendant; and whereas the said Roswell S. Burrows has filed his proper petition and affidavit in said cause, praying a removal and transfer of the same from the said district court of Webster County, Iowa, to the circuit court of the United States for the district of Iowa, at the next term thereof, to be begun and held at Des Moines, on the 20th of October, A. D. 1868:

Now, if the said Roswell S. Burrows, upon the granting of his said application aforesaid, shall duly enter in the said circuit court of the United

States for the said district of Iowa, on or before the first day of
13 the next term thereof aforesaid, copies of all processes, pleadings, and other papers and records pertaining to said suit, as required by the law in such cases made and provided, then this obligation be void; otherwise in full force and virtue.

Witness our hands this 7th day of October, A. D. 1868.

ROSWELL S. BURROWS.
W. W. WILLIAMSON.

STATE OF IOWA, *Polk County, ss:*

I, W. W. Williamson, whose name is signed to the above bond as security, being duly sworn according to law, do say that I am a citizen and resident of Polk County, State of Iowa; that I am a freeholder in said State of Iowa; that I am worth the amount of the penalty of the above bond, over and above all debts and liabilities, exclusive of property exempt from execution.

W. W. WILLIAMSON.

Subscribed and sworn to before me by W. W. Williamson, on this 7th day of October, 1868.

[SEAL.] B. F. KAUFFMAN,
Notary Public.

14 (Endorsed as follows:)

Original bond presented in open court and approved by me, of which the within is a copy.

D. D. CHASE,
Judge of the 11th Dis't, Iowa.

Petition for the removal of cause into the circuit court of the United States.

District court of Webster County, Iowa.

ROSWELL S. BURROWS }
vs. }
GEORGE CRILLEY. }

To the district court of Webster County, Iowa:

The petition of Roswell S. Burrows, the plaintiff in the above-entitled action, respectfully shows that he is a citizen and resident of the
15 State of New York; that the defendant is a citizen and resident of the State of Iowa; that this action is now pending in the district court of Webster County, Iowa; that the matter in dispute herein exceeds the sum of five hundred dollars, exclusive of costs.

And your petitioner further shows that he has in this court an affidavit, as required by the act of Congress, approved March 2, 1867, entitled "An act to amend an act entitled 'An act for the removal of causes in certain cases from the State court, approved July 27, 1866.'"

And your petitioner files this, his petition, praying for the removal of this suit into the next circuit court of the United States, to be held in and for the district of Iowa; and he herewith offers the surety required by the said above-entitled act.

C. C. NOURSE,
Attorney for Plaintiff.

(Endorsed as follows:) In the district court of Webster County, Iowa. Roswell S. Burrows, plaintiff, vs. Georg' Crilley, defendant. Affi-
16 davit, bond, and petition for removal of cause into the circuit court of the United States. Filed Oct. 12, 1868. W. Lumpkins, clerk. C. C. Nourse, att'y for pl'ff.

In the district court of Webster County, State of Iowa.

ROSWELL S. BURROWS }
vs. }
GEORGE CRILLEY. }

To said district court of Webster County, State of Iowa:

Roswell S. Burrow', plaintiff in the above-entitled cause, shows to this court that he, the said Roswell S. Burrows, was, at the time of the commencement of said suit, and ever since has been, and now is, a citizen and resident of the State of New York, and that the said George Crilley was, at the time of the commencement of said suit,
17 and ever since has been, and now is, a resident and citizen of the State of Iowa; that the above-entitled action is now pending in the said district court of Webster County, and the matter in dispute and controversy between the plaintiff and defendant exceeds the sum of five hundred dollars, exclusive of costs; and plaintiff further shows that he has reason to believe, and does believe, that, from prejudice and local influence, he will not be able to obtain justice in this court: Wherefore he prays that, in accordance with the act of Congress in such cases made and provided, an order may be made by this court removing said cause for trial into the circuit court of the United States for the district of Iowa, at the next term thereof, to be begun and held at Des Moines, Iowa, on the day of , A. D. 186 , and here presents and offers a bond in the penal sum of dollars, with proper security, conditioned, as required by law that he will enter copies of all paper', process, pleadings, &c., on or before the first day of the next term
18 of said circuit court, as required by law.

STATE OF NEW YORK,
Orleans County, ss:

I, Roswell S. Burrows, do state, on oath, that I am the plaintiff in the above-entitled cause; that I have read the foregoing petition and the statements therein set forth, and that the same are true and correct, as I verily believe.

ROSWELL SMITH BURROWS.

STATE OF NEW YORK,
Orleans County, ss:

Sworn to and subscribed to before me, by Roswell S. Burrows, at my office in Albion, this first day of September, 1868.

Witness my hand notarial seal, at Albion, the day and year aforesaid.

[SEAL.] ALBERT S. WARNER,
Notary Public.

(Endorsed as follows:) No. 104. Roswell S. Burrows vs. George Crilley. Affidavit. Filed Oct. 13, 1868. W. Lumpkins, clerk. Filed Jan'y 9, 1869. George B. Corkhill, clerk.

19 And, on the same day, to wit, January 9th, A. D. 1869, the said complainant, by his said solicitors, filed in said clerk's office his petition against said George Crilley, defendant, which said petition is in words and figures following, to wit:

20 *Petition in equity.*

In the circuit court of the United States for the district of Iowa.

ROSWELL S. BURROWS }
vs. }
GEORGE CRILLEY. }

To the circuit court of the United States for the district of Iowa:

Your petitioner, Roswell S. Burrows, a resident and citizen *and resident* of the State of New York, complaining of the defendant, George Crilley, a citizen and resident of the State of Iowa, shows to the court:

That petitioner is the owner. and has the title to the following real estate, situate in Webster County, and State of Iowa, to wit, the southeast quarter of section No. 29, township 89 north of range No. 28 west of the 5 p. m. Iowa.

Your petitioner further shows that said real estate is of the value of sixteen hundred dollars, and that said defendant has and holds adverse possession of said real estate, and claims title thereto adversely to petitioner, and refuses to surrender the same, which said possession of defendant is wrongful, and said pretended title is fraudulent

21 and void. Petitioner further shows that the defendant has a pretended patent for said real estate issued by the executive officers of the United States to him; but the said patent was wrongfully issued to him, in violation of the laws of the United States, in this, that said tract of land before the issuing of said patent to defendant, and the pretended purchase thereof from the United States by said defendant, and before any settlement or pre-emption had been made thereon or thereof by defendant, had been set aside and reserved from sale by a general order of the Secretary of the Interior of the Government of the United States, and had by such general order been reserved from sale and set apart for a work of internal improvement, and had been certified by the proper officers of the United States as a part of the Des Moines River grant, accruing to the State of Iowa by virtue of an act of Congress granting to the State (then Territory) of Iowa, certain land for the improvement of the Des Moines River, approved Aug. 8, 1846, which said title was afterwards to the State of Iowa, by joint resolution of the Congress of the United States,

22 approved March 3, A. D. 1861; and that the State of Iowa by deed and letter of patent, under the seal of the State of Iowa, in pursuance of an act of the general assembly authorizing such conveyance, conveyed said tract of land to the Des Moines Navigation and Railroad Company, a corporation created and existing under the general incorporation laws of the State of Iowa, and that said De' Moine' Navigation and Railroad Company has deeded and conveyed said real estate to your petitioner.

Your petitioner avers that the acts of the several officers of the United States in making said pretended sale, and executing said pretended patent to defendant were without authority of law, and that the same are void; and that the affidavits and papers upon which said patent was allowed and issued contained false and fraudulent representations in

relation to the filing of declaratory statements of settlement of said land by defendant, and that the said patent was so procured by fraud; and that the said defendant procured said false and fraudulent
23 statements and affidavits to be made, knowing the *the* same were false and fraudulent, with the intent so fraudulently to procure a patent for said land from the officers of the United States.

Petitioner avers that the use and occupation of said land so wrongfully possessed and withheld by defendant is worth the sum of two hundred dollars.

Your petitioner further shows that this suit was originally commenced in the district court of Webster County, Iowa, and that the defendant, after our service of notice appeared therein, and that, by an order of said district court upon petitioner's affidavit and bond given and approved according to law, this cause has been transferred to the jurisdiction of this court, and a certified copy of the record in said cause has been filed in this court.

Petitioner therefore prays that said pretended patent, which is a cloud upon petitioner's title, be cancelled and set aside, and declared of no force or validity and that petitioner be adjudged the legal
24 owner of said real estate, and have a writ of possession therefor; and also have a decree for the value of the use and occupation, to wit, the sum of two hundred dollars, with interest and costs of suit, and such further order and full relief as in equity and good conscience, plaintiff is entitled to receive.

C. C. NOURSE,
Solicitor for Pl'ff.

(Endorsed as follows:) Roswell S. Burrows vs. George Crilley, def't. Petition in equity. U. S. circuit court. No. 104. Filed Jan. 9, 1869. George B. Corkhill, clerk. C. C. Nourse, sol. plaintiff.

25 And afterwards, to wit, on the 1st day of March, 1869, comes the defendant in said cause, by Galusha Parsons, his solicitor, and files in said clerk's office his answer to said petition, which said answer is in words and figures following, to wit:

26 In the circuit court of the United States, district of Iowa.

ROSWELL S. BURROWS }
against
GEORGE CRILLEY. }

I. George Crilley, the above-named defendant, answering the complainant's bill, saving all manner of exception thereto, says he denies each and every allegation thereof.

II. Further answering, he says that, in the year 1855, the said lands were the property of the United States, and subject to the pre-emption laws; that in said year he entered upon said lands, and that he, in all respects, complied with the pre-emption laws of the United States, and that he duly a patent for said lands, under which patent he now holds the same.

III. Further answering, he says that he has been in possession of said lands more than ten years prior to the commencement of this action, and that this action accrued more than ten years prior to
27 the commencement thereof.

GALUSHA PARSONS,
Def't's Solicitor.

(Endorsed as follows:) 104. Roswell S. Burrows vs. George Crilley. Filed March 1, 1869. George B. Corkhill, clerk.

And afterwards, on the 31st day of April, 1869, comes complainant, by his solicitors, and files in said clerk's office his replication to said defendant's answer, which is in the words and figures following, to wit:

Replication.

In U. S. circuit court for district of Iowa.

ROSWELL S. BURROWS
vs.
GEORGE CRILLEY.

Now comes this repliant, and, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereto, saith that he will aver and prove his said bill to be true, certain, and sufficient to be an-
28 swered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things the repliant is and will be ready to aver and prove as this honorable court shall direct; and humbly prays, as in and by his said bill he hath alread' prayed.

C. C. NOURSE,
Solicitor for Plaintiff.

(Endorsed as follows:) U. S. circuit court. No. 104. Ch'y. R. S. Burrows vs. George Crilley. Replication. Filed April 31, 1860. George B. Corkhill, clerk. C. C. Nourse, sol. for pl'ff.

29 And on this day, to wit, the 20th day of May, in the May term, A. D. 1869, of said court, in the records of the proceedings thereof in said-entitled cause, there appears the following entry, to wit:

ROSWELL S. BURROWS
vs. } No. 104. Ch'y.
GEORGE CRILLEY.

This cause, coming on for hearing, was continued.

30 And, on this day, the 25th day of October, in the October term, A. D. 1869, of said court, in the records of the proceedings thereof in said-entitled cause, appears the following entry, to wit:

ROSWELL S. BURROWS
vs. } No. 104. Ch'y.
GEORGE CRILLEY.

This day this cause, coming on for a hearing, was continued, with leave till next term to take evidence.

31 And, on this day, to wit, Oct. 19, A. D. 1870, in the October term, A. D. 1870, of said court in the records of the proceedings thereof in said entitled cause, there appears the following entry, to wit:

ROSWELL S. BURROWS
vs.
GEORGE CRILLEY. } No. 104. Eq.

Now, on this day, this cause coming on for a hearing, the plaintiff appearing by Nourse & Kauffman, and the defendant by Grant, leave is granted defendant to file amended answer during the term.

And, in pursuance of the leave granted by the said order, the said defendant, by his solicitor, Grant, filed, during said October term, and on the 22nd day of October, A. D. 1870, his amended answer to said petition, which said amended answer is in words and figures following, to wit:

32 Circuit court of the United States for the district of Iowa.

ROSWELL S. BURROWS
vs.
GEORGE CRILLEY } In equity.

The said defendant, by leave of the court had, files the following amended answer, and says:

That the said plaintiff is not the owner, and does not possess the title to the southeast quarter of section 29, township 89 N., range 28 west of the 5th p. m., Iowa.

This defendant denies that said real estate is of only the value of sixteen hundred dollars, but avers the value thereof to be not less than eight thousand dollars. This defendant admits that he holds adverse possession of real estate, and claims title thereto adversely to the petitioner, and refuses to surrender the same. He denies that his possession is unlawful, and his title fraudulent and void. This defendant admits that he holds the title under a real, not pretended, patent, issued
33 by the executive officers of the United States. He denies that it was in any manner in violation of the laws of the United States, and he denies that, before his patent was issued and his purchase made, or before any settlement or pre-emption had been made thereon or thereof, the said tract had been set aside and reserved from sale by a general order of the Secretary of the Interior, or had been by such general order reserved from sale or set apart for a work of internal improvement, and had been certified by the proper officers of the United States as part of the Des Moines River grant, accruing to the State of Iowa, by virtue of an act of Congress granting to the State of Iowa, (then Territory,) for the improvement of the Des Moines River, approved August 8, 1846; denies that said title was afterwards conveyed to the State of Iowa by joint resolution of Congress of the United States, approved March 3, A. D. 1861. He denies that the State of Iowa, by deed and letters of patent under the seal of the State of Iowa, in pursuance of an act of the general assembly of the State of Iowa,
34 authorizing such conveyance, conveyed the said tract of land to the Des Moines Navigation and Railroad Company, which he admits was a corporation, created under the general laws of the State of Iowa. He admits that the governor of Iowa signed, sealed, and delivered such a patent. He denies that he was authorized to do so, or

that the same conveyed any title in law or equity to the said company. He admits that the Des Moines Navigation has conveyed by deed said real estate to the plaintiff.

This defendant denies that the acts of the several officers of the United States in making said patent to him, was without authority of law and void. He denies that the affidavits and papers upon which said patent was allowed and issued, contained false and fraudulent representation in relation to the filings of the declaratory statements of settlement and cultivation of said land by the defendant. He denies that said patent was so procured by fraud. He denies that he pro-
35 cured said (or any) false and fraudulent statements and affidavits to be made, knowing the same were false and fraudulent, with the intent so falsely and fraudulently to procure a patent from said officers for said lands.

He admits the use and occupation of said lands, by reason of improvement made by him, is worth two hundred dollars, but he denies, without said improvement, the use and occupation is worth anything.

And this defendant says that he has been in adverse possession of said land since 1st August, 1855, in good faith under color of title, and has paid all the taxes due thereon, which have been assessed against it, and the title of the plaintiff is barred thereby.

And, further answering, this defendant says that, in the month of July , 1855, he settled upon, improved, and cultivated the said tract of land so as to entitle him from his acts to a pre-emption right under the laws of the United States, if said land was subject to
36 a pre-emption, and he has remained in possession of said tract from that day to this, and improvements which he has put thereon under color and claim of title, holding adversely to every person, are worth three thousand dollars, and he claims pay therefor, befor' he can be dispossessed, if his title is not good.

That, on the 24 day of June, 1860, he made to the proper land offices due proof of his settlement and cultivation, and facts entitling him to a pre-emption under said laws, which application was then rejected. That, on the 8th day October, 1861, he renewed his proof and application, and tendered the price, and it was again rejected. That, after said rejection, until 5 May, 1862, on proof of the same facts, at the same office, this pre-emption was allowed under the acts of 1841, and the 3d March, 1853, by the land offices at Fort Dodge. On the 9th July, 1862, this pre-emption was approved by the Commissioner of the General Land Office, and notice given to the register and receiver at Fort Dodge. On
37 the 10 May, 1862, the Secretary of the Interior decided that the land of this defendant was subject to pre-emption by reason of the said suspension, under the act of 1846, and the pre-emption accruing antecedent to act of 1856, and that this pre-emption was properly allowed.

The said tract of land was never certified to the State under the act of 12 July, 1862, extending the grant of 1846, above the forks of the Raccoon River, and, on the 5 of September, 1862, a patent was issued to him.

Further answering, this defendant says that said tract was reserved from sale under a special certificate of the Secretary of the Interior to the State of Iowa, for the purpose of obtaining the opinion of the judicial officers of the United States, as to the extent of grant of 1846, and for no purpose, and by no other officer, and the Supreme Court of the United States in 1859, in the case of Litchfield vs. The Dubuque and Pacific Railroad Company *directed* that the grant of 1846, did not extend

north of the Raccoon Fork, north of which this tract is, and reservation was void.

38 That, after that decision, the reservation was set aside by the Secretary of the Interior, and this defendant's pre-emption was allowed; that, after the act of July 12, 1862, a settlement was had between the State of Iowa and the Secretary of the Interior, and this tract was decided by the Secretary and admitted by the State to have been sold to this defendant by the United States, and other land certified and accepted by the State, lieu thereof.

And further answering, this defendant avers that the plaintiff and the Des Moines Navigation and Railroad Company are not and were not bona-fide purchasers from the State, under the resolution of the 3 of March, 1861; that the State of Iowa by law had reserved any right it had to this land from the railway-grant settlers thereon; that, prior to the act of 22 March, 1858, under which the governor of Iowa claimed to make said patent to the said company, and on the 15 of November, 1856, the Des Moines Navigation and Railroad Company, re-

39 ported to the governor of Iowa, that the Department of the Interior had decided that the grant of 1846 did not extend above the forks of the Raccoon River, and reported to the State that for that reason they would stop *such* on their contract, and the plaintiff was then a stockhold' and director of said ; that the said corporation and said plaintiff knew and were bound to know the real value of the certificate of reservation, and they knew that by public laws of the State of Iowa, of which they were bound to take notice that the State had granted this and other like lands to the Dubuque and Pacific Railroad Company, subject to plaintiff's claim; and they knew and were bound to take notice that the State of Iowa, in asking Congress to pass the resolutions of the 3 July, 1861, *canceled* that this and like land were granted to the said railroad company subject to the defendant's claim, and the defendant was in the actual, open, and notorious possession of said lands,

40 claiming adverse title as a bona-fide pre-emptor, of which actual possession and claim all persons are bound to take notice.

This defendant annexes and makes part of this answer the following exhibits:

1. Copies of his first proof of settlement, improvement, and pre-emption, upon which proof his pre-emption was allowed.
2. His claim of pre-emption on 21 June, 1860, and rejection.
3. His claim of pre-emption, tenders of money, and rejection on Oct. 8, 1861.
4. Certificate of allowance and entry 5 May, 1862.
5. Approval of his pre-emption by Com. of General Land Office.
6. Decision and opinion of Secretary of the Interior that the reservation of 1846 was declared void.
7. Certificate of Com. of Gen. Land Office that these lands had not been certified under acts of 1856 or 1862.
10. Certificate of register of State land office to same effect.
11. Copy of letter of Secretary Stuart reserving the lands to be adjudicated under act of 1846.

41 And, having answered all the allegations of said bill, he prays he may be hence dismissed.

GEORGE CRILLEY.

GRANT & SMITH,
Solicitors.

(Endorsed as follows:) Burrows vs. Crilley. Equity. Amended answer. Filed Oct. 22, 1870. George B. Corkhill, clerk.

42 LAND OFFICE, FORT DODGE,
June 24th, 1860.

George Crilley has this day applied to file his declaratory statement upon the southeast ¼ of section No. twenty-nine, (29,) township eighty-nine (89) north, of range No. twenty-eight (28) west, containing 160 acres.

No. 1600.] JOHN M. STOCKDALE, *Register*.

(Endorsed:) Exhibit No. 2. Filed Oct. 22, '70. George B. Corkhill, clerk.

LAND OFFICE, FORT DODGE,
Oct. 8th, 1860.

This is to certify that on this day appeared at this office George Crilley, and tendered payment in gold, in full for S. E. ¼ of sec. 29, 89, 28, and claimed the right to enter the same by virtue of the pre-emption act of 1841, and that I refused to allow him so to enter said tract.

C. B. RICHARDS, *Register*.

Refused Oct. 8. 1860. W. Williams, James Mahoney, present.

(Endorsed:) Exhibit No. 3. Filed Oct. 22, '70. George B. Corkhill, clerk.

43 U. S. LAND OFFICE, FORT DODGE, IOWA,
Feb. 14th, 1870.

I hereby certify that George Crilley, of Webster Co., Iowa, did, on the 5th day of May, 1862, enter at this office, under the pre-emption act of 1841, the southeast ¼ of sec. No. 29, 89, 28, with M. B. L. W., No. 100449, for 160 acres, act of March 3d, 1855.

In testimony whereof I have hereunto set my hand.

A. M. DAWLEY, *Register*.

(Endorsed:) Exhibit No. 4. Filed Oct. 22, '70. George B. Corkhill, clerk. Certificate, Feb. 14th, 1870, Fort Dodge land office. D. S. No. 1600. Settled June 10, 1860. Filed June 24, 1860. Also, claims to have settled, in 1855, all of sec. 29, granted to State for Des Moines River imp't. 8 Aug., 1846. Approved Mar. 10, 1852. (See adverse decision Supreme Court, Dec. term, 1859.) Located by George Crilley, per w't No 100449, May 5, 1862. Ad. 55, 160 acres. P. A., 1841. R. & R. 10692.

44 GENERAL LAND OFFICE,
July 2nd, 1870.

I, Jos. S. Wilson, Commissioner of the General Land Office, do hereby certify that the annexed copies of a letter addressed to the register and receiver at Fort Dodge, Iowa, July 9th, 1862, and of certificate of location of warrant No. 100449, for 160 acres, act of 1855, in favor of George Crilley, are * * * * * * * * true and literal exemplifications from the records and files of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] JOS. S. WILSON,
Commissioner of the General Land Office.

45 GENERAL LAND OFFICE,
July 9th, 1862.

REGISTER AND RECEIVER,
Fort Dodge, Iowa.

GENTLEMEN: The case of George Crilley, pre-emptor, claiming the S. E. ¼ sec. 29, t'p 89, R. 28, as per Fort Dodge cert. 10692, on w't 100449, is approved, and will be carried into patent in the order of its filing. The course pursued by you was correct.

Respectfully, your ob't servant,

J. M. EDMUNDS,
Commissioner.

46 Military bounty land act of March 3rd, 1855.

Land warrant No. 100449.] [Registers & receivers, No. 10692.

LAND OFFICE, FORT DODGE,
May 5th, 1862.

We hereby certify that the attached military bounty land warrant No. 100449, was, on this day, rec'd at this office from George Crilley, of Webster Co., State of Iowa.

CHA'S B. RICHARDS, *Register.*
CHA'S POMEROY, *Re'iver.*

Pre-emption act of 1841.

I, George Crilley, of Webster Co., State of Iowa, hereby apply to locate, and do locate, the southeast quarter of section No. twenty-nine, (29,) in township No. eighty-nine (89) north, of range No. twenty-eight (28) west, in the district of lands subject to sale at the land office at Fort Dodge, Iowa, containing 160 acres in satisfaction of the attached warrant, numbered under the act of March 3rd, 1855.

Witness my hand this 5th day of May, A. D. 1862.

GEORGE CRILLEY.

Attest:
CHA'S B. RICHARDS, *Register.*
CHA'S POMEROY, *Receiver.*

I request the patent to be sent to

47 LAND OFFICE, FORT DODGE, IOWA,
May 5th, 1862.

We hereby certify that the above location is correct, being in accordance with law and instructions.

CHA'S POMEROY, *Receiver.*
CHA'S B. RICHARDS, *Register.*

(Endorsed:) Exhibit 5 to answer. Filed Oct. 22, '70. George B. Corkhill, clerk.

GENERAL LAND OFFICE,
June 23rd, 1870.

I, Jos. S. Wilson, Commissioner of the General Land Office, do hereby certify that the annexed is a true and literal exemplification of the original on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

JOS. S. WILSON,
Commissioner of General Land Office.

48

DEPARTMENT OF THE INTERIOR,
Washington, April 10th, 1862.

SIR: George Crilley claims to be entitled to a pre-emption in the S. E. qr. sec. 29, T. 89, R. 28, in Iowa, which right has been rejected by the Commissioner of the Gen'l Land Office, because the land is supposed not to have been the subject of pre-emption under the laws of Congress.

The reason assigned is that the same has been certified to the State of Iowa by this Department as a portion of the lands granted to that State for the river Des Moines improvement, per act August 8, 1846.

It is to be observed that although the lands were certified, yet the action of this Department has by no means been uniform as to the construction of the law under which they were so certified—sometimes it being held that the grant covered these lands, and on other occasions it has been strenuously resisted.

The Supreme Court of the United States in the case of The Dubuque and Pacific R. R. Co., vs. Litchfield, 23 Howard, p. 66, upon the
49 direct question, have decided that the grant did not include these lands, and moreover, Congress, by the joint resolution of March 2nd, 1861, has declared that the lands were improperly certified.

It appears then that the certifying of these lands was an illegal act, and, so far as it affected the right of Crilley, was void.

The railroad grant, by its terms, does not embrace any tracts to which the right of pre-emption has attached, and as it appears to be conceded that Crilley made his settlement in July, 1855, and offered to file his declaratory statement in the proper office within the time prescribed by law, his right is antecedent to that of the State under the railroad grant.

If the facts supporting a pre-emption claim are established to the satisfaction of the local officers, Mr. Crilley should now be permitted to complete his entry of the quarter-section claimed, as all the impediments to the consummation of his right have been removed.

Very respectfully your ob't servant,

CALEB B. SMITH, *Secretary.*

To the COMMISSIONER OF THE GENERAL LAND OFFICE.

(Endorsed:) Exhibit 6. Filed Oct. 22, '70. George B. Corkhill, clerk.

50

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
July 2nd, 1870.

I, Jos. S. Wilson, Commissioner of the General Land Office, do hereby certify that the southeast quarter of section twenty-nine, (29,) township eighty-nine (89) N. of range twenty-eight (28) west of the 5th p. m., Fort Dodge land district, State of Iowa, has not been certified under the act of Congress of May 15, 1856, to the State of Iowa by the Department for the Dubuque and Sioux City Railroad, nor to the State, under act of July 12, 1862, for the improvement of the "Des Moines River."

In testimony whereof I have hereunto subscribed my name and caused

the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

JOS. S. WILSON,
Commissioner of the General Land Office.

(Endorsed:) Exhibit 7, to answer. Filed Oct. 22, '70. George B. Corkhill, clerk.

51 The United States of America to all to whom these presents shall come, greeting:

Whereas, in pursuance of the act of Congress, approved March 3d, 1855, entitled "An act in addition to certain acts granting bounty land to certain officers and soldiers who have been engaged in the military service of the United States, there has been deposited in the General Land Office warrant No. 100449, for 160 acres in favor of Peggy Foxwell, widow of Lemuel Foxwell, private Captains Thruston and Casey's Companies, Virginia Militia, war 1812, with evidence that the same has been duly located upon the southeast quarter of section twenty-nine, township eighty-nine north, of range twenty-eight west, in the district of lands subject to sale at Fort Dodge, Iowa, containing one hundred and sixty acres, according to the official plat of the survey of the said land returned to the General Land Office by the surveyor general, the said warrant having been assigned by the said Peggy Foxwell to

52 George Crilley, in whose favor said tract has been located:

Now know ye that there is therefore granted by the United States unto the said George Crilley, as assigned as aforesaid, and to his heirs, the tract of land above-described: To have and to hold the said tract of land with the appurtenances thereof, unto the said George Crilley, as assigned as aforesaid, and to his heirs and assigns forever:

In testimony whereof I, Abraham Lincoln, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

[SEAL.]

Given under my hand at the city of Washington, the fifteenth day of September in the year of Lord one thousand eight hundred and sixty-two, and of the independence of the United States the eighty-seventh.

By the President.

ABRAHAM LINCOLN,
By W. V. STODDARD, *Sec.*

Recorded vol. 219, page 308.

G. W. GRANGER,
Recorder of the General Land Office.

(Endorsed:) Exhibit 8. Filed Oct. 22, '70. George B. Corkhill, cl'k.

53 STATE OF IOWA, OFFICE OF THE REGISTER OF THE STATE LAND OFFICE,
Des Moines, June 29th, 1870.

I, C. C. Carpenter, register of the State land office of the State of Iowa, hereby certify that the southeast quarter of section twenty-nine, (29,) township eighty-nine (89) north, of range twenty-eight (28) west of the 5th p. m., Fort Dodge land dist., State of Iowa, has not been certified to the State of Iowa by the Department of the Interior at Washington since the decision of the Supreme Court of the United States, at the

December term, 1859, in the case of The Dubuque and Pacific Railroad Company vs. Litchfield, as appears by the records and files of my office.

In testimony whereof I have hereunto set my hand and affixed my official seal the date first above-written.

[SEAL.] C. C. CARPENTER, *Reg.*

(Endorsed:) Exhibit 9. Filed Oct. 22, 1870. George B. Corkhill, clerk.

54 The Secretary of the Interior, on the 26th of July, 1851, addressed a letter to the Commissioner of the General Land Office (enclosing the opinion of Attorney General Crittenden) of which the following is a copy:

DEPARTMENT OF THE INTERIOR,
Washington, July 26, 1851.

SIR: Enclosed I send you a copy of an opinion of the Attorney General, dated the 30th ultimo, in which I concur, relative to the claim of the State of Iowa, under the act of 8th August, 1846, to alternate sections of land along the Des Moines River, above Raccoon Forks, together with all the papers in the case.

The order of Mr. Secretary Ewing of the 6th April, 1850, for the withholding of these lands from market until the close of the then session of Congress may be continued to the end of the approaching session in order to give the State the opportunity of petitioning for an extension of the grant by law. I am, sir, your very ob'd't servant,

ALEX. H. H. STUART,
Secretary.

The COMMISSIONER OF GENERAL LAND OFFICE.

55 That, after the date of this letter, Secretary Stuart consented to bring the whole matter before the President and Cabinet, who arrived at the decision indicated in the following letter of Secretary Stuart to the Commissioner of the General Land Office, of date of October 29th, 1857.

DEPARTMENT OF THE INTERIOR,
Washington, Oct. 29th, 1851.

SIR: I herewith return all the papers in the Des Moines case which were recalled from your office about the first of the present month.

I have reconsidered and carefully reviewed my decision of the 26th July last, and in doing so that no decision I can make will be final, as the question involved partakes more of a judicial than an executive character, which must ultimately be determined by the judicial tribunals of the country. And although my own opinion on the true construction of the grant is unchanged, yet, in view of the great conflict of
56 opinion among the executive officers of the Government, and also in view of the opinions of several eminent jurists which have been presented to me in favor of the construction contended for by the State, I am willing to recognize the claim of the State and to approve the selections without prejudice to the rights, if any there be, of other parties, thus leaving the question as to the proper construction of the statute entirely open to the judiciary.

You will please therefore as soon as may be practicable, submit for my approval such lists as may have been prepared, and proceed to report

for like approval lists of the alternate sections claimed by the State of Iowa, above the Raccoon Forks, as far as the surveys have progressed or may hereafter be completed and returned.

Very respectfully, &c., &c.,

A. H. H. STUART,
Secretary.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

57 On the following day three lists of lands were prepared in the General Land Office, the heading of which will show their respective purposes, and are as follows:

List No. 1. Showing the tracts falling within the limits of the Des Moines grant, above the Raccoon Forks of the Des Moines River, so far as the surveys have extended, under the decision of the Secretary of the Treasury, of 2nd of March, 1849, that such grant extended to the north boundary of the State.

List No. 2. Showing tracts disposed of within those limits, in the interval between the date of one of the previous orders limiting the grant, and one of those extending it above the fork.

List No. 3. Showing the vacant lands subject to the claim of the State.

The third of these lists was presented to the Secretary of the Interior for his approval, to which he appended the following explanatory statement:

58 DEPARTMENT OF THE INTERIOR,
Washington, Oct. 30th, 1851.

The selections embraced in the within list (No. 3) are hereby approved, in accordance with the views expressed in my letter of the 29th instant to the Commissioner of the General Land Office, subject to any rights which may have existed at the time the selections were made known to the land office by the agents of the State, it being expressly understood that this approval conveys to the State no title to any tract or tracts which may have been sold or otherwise disposed of prior to the receipt by the local land officers of the letter of the Commissioner of the General Land Office, communicating the decision of Mr. Secretary Walker, to the effect that the grant extended above the Raccoon Fork.

ALEX. H. H. STUART,
Secretary.

59 EXHIBIT NO. 10.

BURROWS
vs.
CRILLEY.

Letters and selections of the Sec. Int., dates July 26, 1851, Oct. 29, 1851, & Oct. 30, 1851.

The land in controversy was in list No. 3, referred to in selection Sec. In. 30 Oct., 1870.

(Endorsed:) Exhibit 10. Filed Oct. 22, 1870. George B. Corkhill, clerk.

60 And on this day, to wit, the 27th day of October, A. D. 1870, in the October term of said court, for the year A. D. 1870, in the records of the proceeding thereof in said entitled cause, there appears the following entry, to wit:

ROSWELL S. BURROWS
vs.
GEORGE CRILLEY. } No. 104. Ch'y.

Now, on this day, this cause coming on for a hearing—the plaintiff appearing by Nourse & Kauffman, and the defendant by Parsons & Grant—the same is continued.

61 And on this day, to wit, Tuesday, December 6th, in the October term, A. D. 1870, of said court, in the records of the proceeding thereof in said entitled cause, there appears the following entry, to wit:

ROSWELL S. BURROWS
vs.
GEORGE CRILLEY. } No. 104. Ch'y.

Now, on this day, this cause coming on for a hearing—the plaintiff appearing by Nourse & Kauffman, and the defendant by Grant—leave is granted plaintiff to take until January rule-day to except or reply to defendant's answer, heretofore filed herein.

62 And, on the 2nd day of January, A. D. 1871, comes the complainant, by his solicitors, and files his replication to the defendant's amended answer filed in said cause, which replication is in the words and figures following, to wit:

In United States circuit court, district of Iowa. 104. Eq.

R. S. BURROWS
vs.
GEORGE CRILLEY.

The replication of plaintiff to the answer of defendant or respondent.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained
63 material or effectual in the law, to be replied unto, confessed and avoided, traversed or denied is true. All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct; and humbly prays as in and by his said bill he hath already prayed.

C. C. NOURSE,
Sol. for Plaintiff.

(Endorsed:) Filed January 2, 1871. George B. Corkhill, clerk.

64 And on this day, to wit, the 15th day of May, A. D. 1871, in the May term, A. D. 1871, of said court, there is filed in said entitled cause the following stipulation, to wit:

ROSWELL S. BURROWS }
vs. } No. 104. Chancery.
GEORGE CRILLEY. }

This cause is tried on bill, answer, replication, and proof offered and stipulated.

The pl'ff offered in evidence duly-certified copies of the same records, deeds, and documentary proof as is contained in the record in the case of W'm B. Welles vs. Hanna Riley, in this court, offered in behalf of the plaintiff; and defendant offered in evidence the exhibits of his amended answer, and the same evidence as is contained in the record of the said case of Welles vs. Riley, offered for def't.

It is further stipulated that the land in controversy in contained in the deed of the State of Iowa to the De' Moine' Navigation and R. R. Company, the price of which is set out in said record, and
65 that the said lands were certified to the State of Iowa, under the act of August 8, 1846, and is contained in the form of a certificate dated 30 day of October, 1851, contained in said record.

It is further stipulated that the pl'ff have the title of the De' Moine' Navigation and R. R. Company, and of the State, under said certificate and conveyance, and the subsequent legislation of Congress.

It is stipulated that the land in controversy is of the value of two thousand dollars.

It is stipulated that the evidence in the record in the Hanna Riley case m'y be presented by the clerk of the supreme court as part of the record in this cause without being copied into the record here.

NOURSE & KAUFFMAN,
For Plaintiff.
GRANT, *For Defendant.*

(Endorsed as follows:) No. 104. Equity. Roswell S. Burrows vs. George Crilley. Agreement as to facts and record. Filed May 15, 1871. George B. Corkhill, clerk.

66 And upon the trial of the issues joined in said entitled cause, the said defendant to maintain the said issue on his part, by his solicitor, filed and offered in evidence the following documents:

GENERAL LAND OFFICE, *September* 16, 1869.

I, Jos. S. Wilson, Commissioner of the General Land Office, do hereby certify that the annexed copies are true and literal exemplification from the records and files of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]
JOS. S. WILSON,
Commissioner of the General Land Office.

67 LAND OFFICE, FORT DODGE, IOWA, *Dec.* 24, 1861.

Hon. J. M. EDMUNDS,
Com. Gen'l Land Office.

SIR: Mr. George Crilley has appeared at this office and made application to enter the S. E. ¼ of sec. 29, T. 81 N., range 28 west, which he claims as a pre-emption, and has proven by reliable and creditable witnesses the following facts:

1st. That, in July, 1855, he commenced an improvement on said tract, and within thirty days thereafter he moved on to said tract with his family, and has continued to improve and cultivate said land since that time, and still continues to reside thereon and improve the same.

2nd. That, soon after he commenced said improvements, he appeared at the local land office and requested to file his declaratory statement to pre-empt said tract and was not permitted to do so, being told that the same was not subject to pre-emption, being part of a grant
68 made to the State for the purpose of improving the Des Moines River.

3rd. All the formal proof required by law to prove up a pre-emption I have examined—all the facts and proof carefully; and, in my judgement, Mr. Crilley is legally and equitably entitled to enter said tract under the pre-emption law of 1841, and the following are my reasons for such an opinion:

1st. Mr. Crilley has proven that, in July, 1855, he commenced an improvement on said tract with the intention of making the same his permanent home, and of obtaining title thereto by virtue of the pre-emption act of 1841; within the proper time he appeared at the local office and desired to file his declaratory statement; he now makes full and complete proof, as required by said pre-emption law.

2nd. Was the land in question subject to pre-emption at the date he commenced his improvement? I can see no reason why it was not; it was surveyed; never was included in any reservation by any treaty, law, or proclamation of the President; nor was the same subject
69 to any of the reservation, as stated in section 10 of the act of Sept. 4, 1841. I am aware that it had been claimed as a portion of and included in the grant made to the State of Iowa in 1846, to aid the improvement of the Des Moines River; but the U. S. Supreme Court have decided that the provisions of that grant did not extend above the Rac'oon Fork, so called, (and what is the law now,) as stated in the opinion of the judge in the case of The Dubuque and Pacific Railroad Company vs. Litchfield, above referred to, was the law always; and that as regards any acquired rights under the pre-emption law any illegal act of any and all persons is void.

Therefore I conclude that the land was subject to pre-emption when Mr. Crilley commenced his first improvement, and that he acquired an inc*oh*ate right to title, which, by the same law he has a right now to perfect.

3rd. Has he ever forfeited his right acquired by commencing his improvement?

I can see no point wherein he has forfeited any such acquired right, but, on the contrary, he has complied with every portion of the
70 law to the letter, except in filing his declaratory statement, and in that he complied as far as was in his power, the local land office refusing to receive his filing.

Again it is claimed by the State that if they did not acquire any title by virtue of the act of August, 1846, that then the land is granted by the grant to the State for railroad purposes, and the railroad company now claim the land, but it is clear that if Mr. Crilley had a pre-emption right previous to the passage of the railroad grant, as he undoubtedly had, then it was reserved by the provisions of that grant, most certainly, which, so far as this case is concerned, disposes of that claim.

I have refused to allow Mr. Crilley to perfect his entry, and pay for the said land, not wishing to make an entry which was not proper, but, in my judgement, there is no doubt as to Mr. Crilley's legal right to

perfect said entry, and I would respectfully ask for instructions in the matter.

I am, very respectfully, your ob'd't serv't,

C. B. RICHARDS, *Register*.

71 GENERAL LAND OFFICE, *January* 27, 1862.

REGISTER and REGISTER,
Fort Dodge, Iowa.

GENTLEMEN: Mr. George Crilley claims pre-emption to the S. E. ¼ 29, 89, 28 W., in virtue ot settlement commenced in 1855. In 1852, a list was certified to the State of Iowa for certain lands under Des Moines grant of 1846. The ruling of the Supreme Court of December term, 1859, is against that grant above the Raccoon Fork, where that tract mentioned is located.

Irrespective of that claim, the pre-emption claim falls to the ground by reason of the settlement having been made whilst there was an outstanding title from the United States under color of the act above mentioned.

Respectfully,

J. M. EDMUNDS, *Commissioner*.

72 DEPARTMENT OF THE INTERIOR,
Washington, April 10, 1862.

SIR: George Crilley claims to be entitled to a pre-emption on the S. E. ¼, sec. 29, T. 89, R. 28, in Iowa, which right has been rejected by the Commissioner of the General Land Office, because the land is supposed not to have been the subject of pre-emption under the laws of Congress.

The reason assigned is that the same has been certified to the State of Iowa by this Department as a portion of the lands granted to that State for the river Des Moines improvement, per act August 8, 1846.

It is to be observed that although the lands were certified, yet the action of this Department has by no means been uniform as to the construction of law under which they were so certified, sometimes it being held that the grant covered these lands, and on other occasions it has been st'enuously resisted. The Supreme Court of the United States, in the case of The Dubuque and Pacific Railroad Company vs. Litchfield, 24 Howard, p. 66, upon the direct question, have decided that the
73 grant did not include these lands, and moreover Congress, by the joint resolution of March 2d, 1861, has declared that the lands were improperly certified.

It appears then that the certifying of these lands was an illegal act, and, so far as it affected the right of Crilley, was void.

The railroad grant, by its terms, does not embrace any tract to which the right of pre-emption has attached; and as it appears to be conceded that Crilley made his settlement in July, 1855, and offered to file his declaratory statement in the proper office, within the time prescribed by law, his right is antecedent to that of the State under the railroad grant.

If the facts supporting a pre-emption claim are established to the satisfaction of the local officers, Mr. Crilley should now be permitted to complete his entry of the quarter section claimed, as all the impediments to the consummation of his right have been removed.

Very respectfully, your ob't serv't,

CALEB B. SMITH, *Secretary*.

To the COMMISSIONER OF THE GENERAL LAND OFFICE.

74 GENERAL LAND OFFICE, *April* 22, 1862.

REGISTER AND RECEIVER,
Fort Dodge Iowa.

GENTLEMEN: The case of George Crilley, in which he claimed the right to enter the S. E. ¼, sec 29, T. 89, R. 28 W., at Fort Dodge land office, was carried by appeal to the Secretary of the Interior from the adverse decision of this office, and, on the 10th inst., the Secretary reversed the decision of this office, and decided that "if the facts supporting a pre-emption claim are established to the satisfaction of the local officers, Mr. Crilley should be permitted to complete his entry," there being no legal impediment to debar his right. You will therefore notify Mr. Crilley of the decision, and call upon him for the proof, pursuant to the aforesaid decision.

Respectfully, your ob't s'rv't,

J. M. EDMUNDS,
Commissioner.

75 GENERAL LAND OFFICE, *June* 16, 1862.

REGISTER AND RECEIVER,
Fort Dodge, Iowa.

GENTLEMEN: You have sent up the proof in Mr. Crilley's case, and it is satisfactory. The Secretary, on affirming Crilley's right, says: "If the facts supporting a pre-emption claim are established to the satisfaction of the local officers, Mr. Crilley should be permitted to complete his entry." The language quoted formed a part of my letter of the 22 April last, and the question recurs why did you not permit the entry, as the sufficiency of the proof was referred to your judgement?

Should there be no objection, you will allow the entry, and send the papers up for approval.

Respectfully, your ob't ser't,

J. M. EDMUNDS,
Commissioner.

76 LAND OFFICE, FORT DODGE, IOWA, *June* 25, 1862.

Hon. J. M. EDMUNDS,
Com'r Gen. Land Office.

SIR: Yours of the 16th inst. is received, and in reply would say that Mr. Crilley was permitted to enter at the time he made his proof, and his warrant and application was sent up with the monthly returns for May, being R. and R. No. 10692, L. W. No. 100449, which was the proper course, as I supposed; if it was not, please inform me.

I am, very respectfully, your ob't serv't,

CHA'S B. RICHARDS, *Register.*

GENERAL LAND OFFICE, *July* 9, 1862.

REGISTER & RECEIVER,
Fort Dodge, Iowa.

GENTLEMEN: The case of George Crilley, pre-emptor, claiming the S. E. ¼ sec. 29, t'p 89, R. 28, as per Fort Dodge cert. 10693, in W.
77 100449, is approved, and will be carried into patent in the order of its filing. The course pursued by you was correct.

Respectfully, your ob't s'rv't,

J. M. EDMUNDS,
Commissioner.

LAND OFFICE, FORT DODGE, IOWA, *May* 5, 1862.

George Crilley, having been first duly sworn, deposes and says that, within thirty days after he commenced his improvement on the S. E. ¼ of sec. 29, in T. 89 N., R. 28 W., he went to the land office at Fort Dodge, where said land was then subject to pre-emption, and requested of the person in charge of the register's office permission to file his declaratory statement, which was refused, he being told that this tract was not subject to sale or pre-emption; he then asked for a certificate of the fact that he claimed said tract, and that was also refused. He further says, that still believing that he had a legal right to pre-empt said
78 tract, he continued to improve said tract, and has been constantly at work since that time, to wit, the 1st of August, 1855, to have said right recognized; that he has frequently tendered payment to the local officers for said tract, which has been refused up to this time.

GEORGE CRILLEY.

Subscribed and sworn to before me this 5 day of May, 1862.

CHA'S B. RICHARDS, *Register*.

LAND OFFICE, FORT DODGE, IOWA, *May* 5, 1862.

William Williams, having been duly sworn according to law, do depose and say that I know that George Crilley commenced an improvement on the southeast ¼ of section twenty-nine, (29,) in township eighty-nine (89) north, of range 28 west of the 5 p. m., Iowa, on or about the first of August, A. D. 1855. The said Crilley moved on to the said tract with his family, consisting of his wife and children; that, during the fall of 1855, he ploughed and fenced three or more acres on said tract; that he, at that time, and always since, claimed a pre-emption
79 right to said land; that he has continued to live on, and to improve said land from said time to this, and still continues to live on and improve said tract; that he has on said tract probably thirty (30) acres fenced, and under a good state of cultivation; that he has a good substantial house on said tract, in which he resides with his family, and has had since the month of August, A. D. 1855; that I know him to be a citizen of the United States, having seen him vote; I know Mr. Crilley did not move off deeded land to make this pre-emption; I further know that it was well known and publicly stated that no person could file his declaratory statement on the so-called Des Moines River lands, by the local land officers.

W'M WILLIAMS.

Subscribed and sworn before me this 5 day of May, 1862.

CHA'S B. RICHARDS, *Register*.

80 *Affidavit required of pre-emption claimant.*

I, George Crilley, claiming the right of pre-emption under the provisions of the act of Congress entitled "An act to appropriate the proceeds of the sale of the public lands, and to grant pre-emption rights," approved September 4, 1841, to the southeast quarter of section number twenty-nine, (29,) of township number eighty-nine (89) north, of range number twenty-eight west, subject to sale at Fort Dodge, Iowa, do solemnly swear that I have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States,

nor have I settled upon and improved said land to sell the same on speculation, but, in good faith, to appropriate it to my own exclusive use or benefit; and that I have not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which I may acquire from
81 the Government of the United States should inure, in whole or in part, to the benefit of any person except myself.

GEORGE CRILLEY.

I, Cha's B. Richards, register of the land office at Fort Dodge, do hereby certify that the above affidavit was taken and subscribed before me this 5 day of May, A. D. 1862.

CHA'S B. RICHARDS, *Register.*

82 Military bounty land act of March 3, 1855.

Land warrant No. 100449.] [Register and receiver's No. 10692.

LAND OFFICE, FORT DODGE, IOWA,
May 5, 1862.

We hereby certify that the attached military *bond* land warrant, 100449 was, on this day, received at this office from George Crilley, of Webster County, State of Iowa.

CHA'S B. RICHARDS, *Register.*
CHA'S POMEROY, *Receiver.*

I, George Crilley, of Webster County, State of Iowa, hereby apply to locate, and do locate, the southeast quarter of section No. 29, (29,) in township No. eighty-nine (89) north, of range No. 28 (28) west, in the district of land subject to sale at the land office in Fort Dodge, Iowa, containing 160 acres, in satisfaction of the attached warrant numbered 100449, issued March 3, 1855.

Witness my hand this 5 day of May, A. D. 1862.

GEORGE CRILLEY.

Attest:

CHA'S B. RICHARDS, *Register.*
CHA'S POMEROY, *Receiver.*

LAND OFFICE, FORT DODGE, IOWA,
May 5, 1862.

We hereby certify that the above location is correct, being in
83 accordance with law and instructions.

CHA'S POMEROY, *Receiver.*
CHA'S B. RICHARD', *Register.*

(Endorsed as follows:) G. L. O. Approved 9 July, 1862. See W. R. & R. same date. Fort Dodge, Iowa. K. Pat. Sep. 15, 1862. Rec., vol. 219, p. 308.

84 The United States of America to all to whom these presents shall come, greeting:

Whereas, in pursuance of the act of Congress approved March 3, 1855, entitled "An act in addition to certain acts granting bounty land to certain officers and soldiers who have been engaged in the military

service of the United States," there has been deposited in the General Land Office warrant No. 100449 for 160 acres, in favor of Peggy Foxwell, widow of Lemuel Foxwell, private, Captains Thurston and Carey's Companies, Virginia Militia, war 1812, with evidence that the same has been duly located upon the southeast quarter of section twenty-nine, in township eighty-nine north, of range twenty-eight west, in the district of land subject to sale at Fort Dodge, Iowa, containing one hundred and sixty acres, according to the official plat of the survey of the said land returned to the General Land Office by the surveyor general, the said warrant having been assigned by the said Peggy Foxwell to George Crilley, in whose favor said tract has been
85 located:

Now know ye that there is therefore granted by the United States unto the said George Crilley, as assignee as aforesaid, and to his heirs, the tract of land above described: To have and to hold the said tract of land, with the appurtenances thereof, unto the said George Crilley as assignee as aforesaid, and to his heirs and assigns forever.

In testimony whereof I, Abraham Lincoln, President of the [L. S.] United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the fifteenth day of September, in year of our Lord one thousand eight hundred and sixty, and the independence of the United States the eighty-seventh year.

ABRAHAM LINCOLN.

By the President:

By W. O. STODDARD, *Sec'y.*

Recorded vol. 219, page 308.

J. N. GRANGER,
Recorder of the General Land Office.

86 And on this day, to wit, May 15, in the May term, A. D. 1871, of said court, in the records of the procedings thereof in said entitled cause, there appears the following entry, to wit:

ROSWELL S. BURROWS
vs.
GEORGE CRILLEY. } No. 104. Equity.

And now, this cause having been submitted to the court upon the bill, answer, and replication, and proofs, and stipulation of counsel, it is ordered and adjudged that the equity of the cause is with the plaintiff, and that the title of the plaintiff to the southeast quarter of section number twenty-nine, (29,) township number eighty-nine (89) north, of range twenty-eight west of the fifth p. m., be quieted, and that the patent issued to and held by def't for said lands, dated the 15th day of September, 1862, be, and the same is hereby, set aside, and cancelled and held for naught; and that defendant, George Crilley, and all
87 persons claiming through or under him have no right, legal or equitable, in and to said real estate. It is further ordered and decreed that a writ of restitution issue from this court to put the plaintiff in possession of said lands. The right of plaintiff to compensation for use and occupation or damage for the wrongful detention of said real estate is not adjudicated by this decree. It is ordered and adjudged that plaintiff have and recover his costs in this behalf expended, taxed at $ and that execution issue therefor.

Upon the rendition of the above decree, the defendant, George Crilley, prays an appeal in open court during the term, which is allowed, upon defendant filing a bond in the penal sum of five hundred dollars, conditioned as required by law, with security to be approved by the

88 And on the same day, to wit the 15th day of May, A. D. 1871, comes the defendant, by Grant, his sol., and files his supersedeas bond, which said supersedeas bond is in words and figures following, to wit:

Know all men by these presents that we, George Crilley, principal, and James Grant, surety, are held and firmly bound unto Roswell S. Burrows in the penal sum of five hundred dollars; to which payment we bind ourselves and each of us firmly by these presents.

The condition of this obligation is this, that *whenever* the circuit court of the United States for the district of Iowa has, at the May term, 1871, of said court, in the case of Roswell S. Burrows vs. George Crilley, in equity, rendered decree against Crilley, from which he has taken an appeal to the Supreme Court of the United States: Now, the condition of this obligation is such, that if Crilley shall duly present his appeal and abide by and perform the order of the Supreme Court
89 in the said cause, this obligation to be void; otherwise to remain in full force.

GEORGE CRILLEY,
By GRANT, *His Attorney.*
JAMES GRANT.

(Endorsed as follows:) 104. Chancery. Roswell S. Burrows vs. George Crilley. Appeal bond. Approved by me and filed. George B. Corkhill, clerk.

90 Circuit court of the United States, district of Iowa.

I, George B. Corkhill, clerk of said court for said district, do hereby certify that the above and foregoing sets out full, true, and complete copies of all pleadings, exhibits, documents, offered in evidence, and all record entries in a certain cause adjudicated in said court wherein Roswell S. Burrows was complainant and George Crilley defendant, as full, true, and complete as the original of the same now remains on file and of record in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court at my office in Des Moines, in said district, this 13th day of October, A. D. 1871.

[SEAL.]

GEORGE B. CORKHILL,
Clerk Circuit Court U. S., Dis't of Iowa.

(Indorsement on cover:) No. 358. George Crilley, appellant, vs. Roswell S. Burrows. Iowa C. C. U. S. Filed 26th October, 1871.

In the Supreme Court of the United States.

DECEMBER TERM, 1872.

GEORGE CRILLEY, *Appellant*,
vs.
ROSWELL S. BURROWS, *Appellee*. } No. 358.

Appeal from the Circuit Court of the United States for the District of Iowa.

ARGUMENT FOR APPELLANT,

BY JAMES GRANT.

Globe Steam Print, Davenport.

In the Supreme Court of the United States.

GEORGE CRILLEY, *Appellant*,
vs.
ROSWELL S. BURROWS, *Appellee*.

No. 358.

Appeal from the District of Iowa.

ARGUMENT FOR APPELLANT.

STATEMENT OF THE PLEADINGS.

Roswell S. Burrows filed his bill in equity in the District Court of Webster County, Iowa, setting forth: Record, page 8:

That said Burrows is the owner of and has the title to the southwest quarter of section 29, township 89 north, range 28 west of the 5th P. M., in Webster county. That the value thereof is $1,600; that Crilley holds adverse possession, which is fraudulent and void. That the defendant has a pretended patent to said real estate, issued by the executive of United States; but said patent was wrongfully issued, in violation of the laws of the United States, in this, that said tract of land, before any settlement and

preemption had been made thereon, had been reserved from sale by a general order of the Secretary of the Interior, and set apart for a work of internal improvement, and had been certified by the proper officers of the United States as a part of Des Moines River grant by virtue of act of 8th August, 1846,—which title was afterwards by joint resolution of Congress of 3d March, 1861 approved, and that the State of Iowa has conveyed the tract to the Des Moines Navigation & Railroad Company, and the Des Moines Navigation & Railroad Company had conveyed to the plaintiff.

That the acts of the officers of the United States in making the sale to Crilley were null, and the affidavits and papers on which the patent was allowed contained false and fraudulent allegations as to proofs of settlement and the patent was procured by fraud. That the defendant knew the allegations to be false: prays that the patent of Crilley may be set aside and declared void, and that he may have possession of the property.

On Burrows motion and affidavits the cause was transferred to the Circuit Court for Iowa, the petition refiled, and the defendant answered, Record, page 10:

Denying the plaintiff's title and alleging the value of the property to be $8,000; admits holding adversely to the plaintiff, by patent from the United States, denies that the land was reserved from sale when his title was acquired, under the act of 1846, or for any other public improvement: denies that the title under act of 1836 was confirmed by the joint resolution of 3d March, 1861; denies all allegations of frauds, or false or fraudulent representations as to improvements and cultivation in the land, or in obtaining his patent; admits the use and occupation of the land; avers that he has been in possession since 1st August, 1855, in good faith under color of title and has paid all taxes assessed on it, and the title of the plaintiff is barred thereby; sets up affirmatively that in 1855 he settled upon and improved the land, so as to entitle him to a preemption, and has ever since remained in possession, holding adversely

to everybody; that his improvements are worth $3,000, and he claims payment therefor if his title is not good.

That on 20th June, 1860, he made due proof of his settlement and cultivation under the preemption, and his application was then rejected; that on 8th Oct., 1861, he renewed his application and tendered the price and it was again rejected; that afterwards on 5th May, 1862, as proof of the same facts, at the same office, his preemption was allowed under the acts of 1841, and 3d March, 1854, by the land officers at Fort Dodge.

On 9th July, 1865, this preemption was approved by the Commissioner of the General Land Office, and notice given to the land officers at Fort Dodge. On 10th May, 1862, the Secretary of the Interior decided that his preemption was a good one, and had accrued prior to the act of 1856. That the tract of land was never certified to the State under the act of 12th July, 1862, extending the grant of 1846, and on 5th Sept., 1862, a patent was issued to him.

That the said tract was reserved from sale under a special certificate of the Secretary of Interior for the purpose of obtaining the opinion of the judicial officers of the United States, and for no other purpose; and that the Supreme Court, in 1859, in Litchfield's case, decided that the grant of 1846 did not extend north of Raccoon Fork, north of which this tract is, and that the reservation was void. That after that decision the reservation was set aside by the Secretary of the Interior and the defendant's preemption allowed. That after the act of 12th July, 1862, a settlement was had between the United States and the State of Iowa, and this tract was admitted by the State to have been sold to this defendant, and other land certified to the State in lieu thereof.

The answer denies, that the plaintiffs were *bona fide* purchasers of the State of Iowa, under the resolution of 3d March, 1861, that the Des Moines Navigation & Railroad Company, had notice of the construction of the act 1846, in November, 1856, before they took a deed from the State,

that they knew and were bound to take notice, that in obtaining the act of 12th July, 1862, the State had requested protection to preemptors, of which Burrows was bound to take notice. Annexed are copies of proofs, of settlement, cultivation, rejection, allowance of preemption 5th May, 1862, approved of his preemption, decision and opinion of Secretary of Interior, that the reservation under act of '46, was void, certificate that these lands were not certified to the State under the acts of '56, '62, copy of Stuart's letter reserving the land under the act 1846.

To this answer, replication was filed and the cause was tried on agreed facts and exhibits, a decree made, cancelling Crilley's patent. The agreed facts, were the record and documentary evidence in Welles v. Riley, reprinted in the Homestead case, the exhibits annexed to the defendants answer, applications for preemption, proofs, rejection, allowance, order of Secretary Interior and Patent. That the lands were in the Deed from the State, to the Navigation Company, and certified to the State under Stuart's certificate of 30th October, 1837. That the land was of the value of two thousand dollars. The record of Crilly's proof of preemption was offered both by himself and the plaintiff. It was proved, Record 23, that he settled on, improved, and cultivated the land in August, 1855, and resided on it ever since. His preemption refered to Commissioner Land Office, Record, 20, claim rejected 27th January, '62, Record 22, the reservation under act '46, set aside and declared null, by Secretary of Interior 10th April, 1862, That his cultivation and settlement, was prior to act 15th May, '56, and not affected by, that he was entitled to a preemption, letter of Secretary Interior, 10th April, 1862, and allowed on 5th May, 1862, Record, 25, approved July, 9th 1862, Record 23, Patent issued 15th September, 1862, Record 25.

ARGUMENTS ON THE CASE.

Two questions arise :

1st. Crilley has been in open, notorious and adverse possession, claiming title since August, 1855.

The Statute of Iowa, Code 478.

Limits the agent of action for the recovery of real estate, to the period of ten years; and open, notorious possession under color of title, is a bar to a recovery by an adverse claimant.

2d. The preemptions of Crilley were properly allowed, after the decision of the Litchfield case.

This case differs from the case of Welles vs. Riley in this respect. Her preemption right did not attach, until after the lands were reserved under the act of 15th May, 1856, and her title came under the reservation clause of that act. By the way, we have neglected to have the record in that cause printed as a part of this, but as there are plenty of copies on hand, in that or some of these cases, we trust the court will excuse the oversight. All the evidence in that cause, except the preemption proofs, and much more is printed in Williams vs. Baker, and Homestead vs. Des Moines Navigation & Railroad Company, now before the court.

Having already argued and shown, that the plaintiff took no title under the Des Moines Navigation Company, under the resolution of 2d March, 1861, and that he could not hold, under the act of 12th July, 1862, because the State had acknowledged the Railroad title and taken indemnity therefor; we place this case in the same category and show, by the Harvey settlement, that the United States sold this land to Crilley, and gave the State indemnity therefor. We prove this in this manner. This preemption was allowed and patent issued 15th September, 1862. This land is not included in the lands in place in the Harvey settlement. See the list in Homestead case.

The plaintiff, therefore, not having his lands certified under resolutions of 3d March, 1861, or 12th July, 1862, and not coming under the designation of *bona fide* pur-

chaser under resolution of 3d March, 1861, the Supreme Court in Litchfield case, holding that he could not claim as a *bona fide* purchaser under that act, has no title whatever, and is not entitled to relief.

But we wish to establish the validity of the appellant's title. We think we can do this on two grounds:

1st. Conceding that the land was reserved by Secretary of Interior, on survey, that reservation ceased by certifying under Stuart's certificate. If that was invalid, the lands belonged to the United States, and were the object of preemption the moment that certificate was declared void.

2d. We think the following act of Congress fully justified the Secretary of Interior in setting aside the reservation, and allowing the preemption to Crilley.

The act of Congress of 3d March, 1853, 10, Laws of United States, page 244, entitled, An act to *extend* preemption rights to certain lands therein named: enacted, "that the preemption laws of the United States are hereby extended over the alternative sections of public lands along the lines of all the railroads of the United States, wherever the public lands have or may be granted by acts of Congress, giving the settler the privilege of entering with bounty land warrants, at one dollar and twenty-five cents per acre, &c., with the following proviso, and provided further, that any settler who has or may have hereafter, settle on lands hereto reserved on account of claims, under French, Spanish, or *other grants* which has heretofore or shall be declared by the Supreme Court, to be invalid, shall be entitled to all the rights of preemption granted by this act, and the act of 4th September, 1841, entitled an act to appropriate the proceeds of the public lands, and to preemption rights, after the lands shall have been released from the reservation, in the same manner as if no reservation existed."

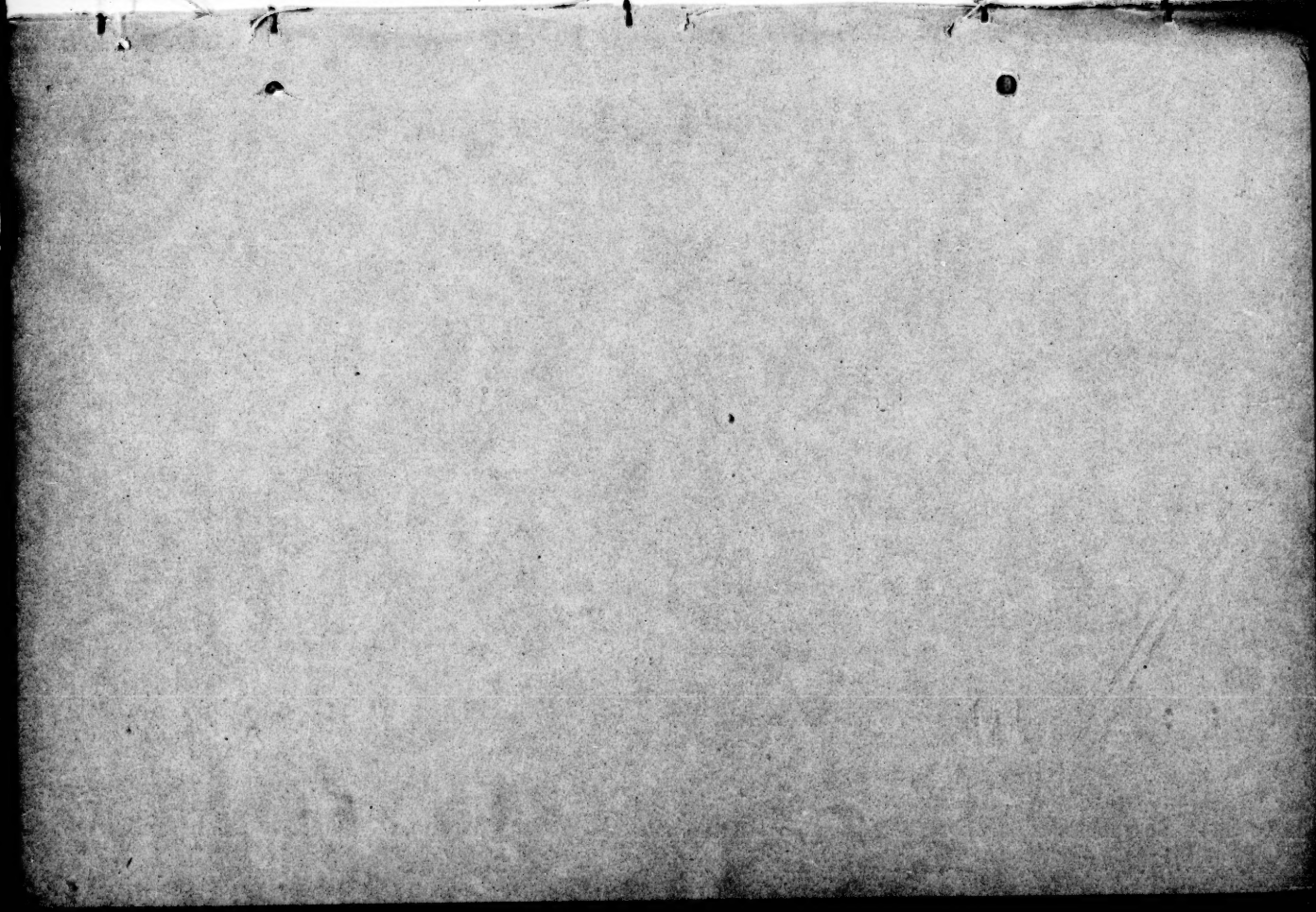
We do not think this act requires any interpretation. It covers the very case before the court.

The object of the act was to extend the preemption right to lands reserved : first, the even sections on railway grants which had been previously reserved ; lands reserved on account of French, Spanish, or other grants; not other grants by foreign governments, but "other grants," any other grants, all other grants.

It has been said that the word "other" grants, meant grants by other foreign government, but that cannot be so. The object was to enlarge the benefits of preemption to all settlers to go on lands reserved by Congress for public improvements by railroads, for French, Spanish, or *other* grants of any and every description.

There can be no possible motive to limit the construction of the act. Congress, as early as 1831, began to regard the settler on public lands with favor, and from that day to this, he has been a favorite, until the people of the United States regard him as the pioneer of civilization, and gave him a homestead on the public lands, on consideration of his improving them.

JAMES GRANT,
for Appellant.



Supreme Court of the U. S.

GEORGE CRILLEY,
Appellant,
vs.
ROSWELL S. BURROWS.

No. 358. Appeal from Circuit Court of U. S. for District of Iowa.

ARGUMENT FOR ROSWELL S. BURROWS.

This is a bill in equity, by Roswell S. Burrows, a citizen of New York, against George Crilley, a citizen of Iowa, filed originally in the District Court of Webster county, State of Iowa, and changed to the jurisdiction of the Circuit Court of the U. S. for the District of Iowa, upon the petition of Burrows under the provisions of the Act of Congress, approved, March 2, 1867. Burrows claims that he is the owner of the south east quarter of section 29, township 89, north of range No. 28, west 5 P. M., in the State of Iowa; and avers and proves his title as follows:

1. That the land claimed was certified to the State of Iowa, and approved by the Commissioner of the General Land Office and the Secretary of the Interior, on the 30th day of October, 1851, as lands enuring to the State of Iowa, under the Act of Congress approved August 8, 1846, for the improvement of the Des Moines River.

See Stipulation in Record, page 20.

II. That the State of Iowa sold said land to the Demoine Navigation and R. R. Company for a valuable consideration, on

the 5th day of May, 1856, and conveyed the same to said company by deed on the 3rd day of May, 1858.

See Stipulation, Record, page 20.
Wells *vs.* Riley, Record, page 377.
Wells *vs.* Riley, Record, page 28.

III. The plaintiff Burrows has the title of the Demoine Navigation and R. R. Company, and of the State under said conveyance and certificate, and the subsequent legislation of Congress.

Stipulation, page 20, of Record.

IV. The subsequent legislation of Congress, to-wit: the Joint Resolution, approved March 2d, 1861, granted and relinquished to the State of Iowa, "all the title then retained by the United States in the tracts of land along the Des Moines river, and above the Raccoon fork thereof, in the State of Iowa, certified to the State improperly by the Department of the Interior, as part of the grant made by Act of Congress, approved August 8th, 1846, which were then (at the date of the resolution), held by *bona fide* purchasers under the State of Iowa.

This makes out the plaintiff's title, as this court has heretofore decided.

Walcott *vs.* Demoine Nav. Co., 5th Wallace, 681.
Riley *vs.* Wells, (not reported.)

The bill of Burrows further charges, that Crilley, the respondent in the court below, holds a patent for the land in controversy wrongfully issued to him by the officers of the United States, which patent constitutes a cloud upon the title of Burrows.

The evidence shows that the patent was issued on the 15th of September, 1866, in pursuance of the location of a military bounty land warrant, which location was made on the 5th of May, 1862.

See Record, pages 25 and 26.

The bill prays a cancellation of this patent, and a decree for possession, and to quiet the title. The Circuit Court entered a decree in accordance with this prayer, from which Crilley appeals.

The only question of law involved in this case may be briefly stated, to-wit: Had the government of the United States parted with the title to this tract of land at the date of the joint resolution, March 2nd, 1861, or had the appellant, Crilley, at or prior to that date acquired any vested right or title to the land?

If not, it is clear that the title remained in the United States and passed to Burrows under the joint resolution of March 2nd, 1861.

The joint resolution of March 2nd, 1861, is an absolute, unconditional grant of *all the title* the United States held at that date and there is no reservation even in behalf of settlers, or those who claimed or might claim pre-emptions upon it.

The usual provision, in government grants to aid in works of internal improvement, reserving such lands from the operation of the grant as might be claimed under the pre-emption laws of the United States is not found in this act. The form of this joint resolution emanated from the Secretary of the Interior, and he recommended congress to adopt it.

The reason why this usual exception and reservation in behalf of settlers and pre-emption claimants, was not incorporated in this resolution, is manifest. The history of these lands shows that up to that date no pre-emptions had ever been allowed or recognized by the department. The Secretary of the Interior had set apart these lands for a work of internal improvement, had separated them from the great body of the public lands, and certified them to the State of Iowa, as enuring to the State under the grant of August 8th, 1846. Whether rightfully or wrongfully set apart as belonging to that grant is immaterial—they were reserved by the proper officers as belonging to that grant, and certificates having the same force and effect as patents, had been executed in due form to the State of Iowa.

They were set apart *in fact*, they were reserved *in fact*, and no

stranger by the mere act of going upon these lands and offering to pre-empt them, could acquire any vested right in them.

The evidence in this cause shows that Crilley went upon the tract of land in question, and commenced his improvement on the 1st of August, 1855, nearly four years after they had been certified to the State, and one year after the State of Iowa, in pursuance of a public statute of the State, had contracted to sell these lands to the Demoine Navigation and R. R. Co., and whilst the work of internal improvement for which they were set apart, was in progress. His own affidavit and that of his witness, Williams, shows that within 30 days of the time he went on the land he made application to the local land office to pre-empt the same and was told that the land was not subject to sale or pre-emption and that he was refused permission to file his declaratory statement, and that the officers of the government continued to refuse him permission to file such a statement until May 5th, 1862, more than a year after congress had absolutely granted to the State all the title of the United States to these lands. His witness, Williams, makes oath that it was well known and publicly stated by the local land officers, that no person could file his declaratory statement on the so-called Des Moines River Lands.

See record, page 24.

The facts in detail constituting this reservation are so fully and clearly set out by this court in the case of Walcott vs. Demoine Navigation Co., 5 Wallace 681, that we cannot better state them than to quote at large from that opinion.

After citing the Act of August 8th, 1846, the court says:

"Some year and a half after the passage of this act a question arose before the Commissioner of the general land office whether the grant of the odd sections within the five miles extended above the fork. He determined that it did, and that it extended throughout the whole line of the river within the limits of Iowa. It appears, however, that he afterwards changed his opinion, and on the 19th June, 1848, a proclamation was issued by the President, countersigned by him, ordering a sale of some of these odd sections, among other

lands, lying above the fork, and which was to take place on the following October. On the attention of the Secretary of the Treasury being called to the subject he, after an examination of the act, determined that upon a true construction of it the grant extended above the Raccoon Fork, and directed that the odd sections should be reserved from the sale, which was done accordingly, and the State of Iowa duly notified. This was on the 16th June, 1849. On the 6th April, 1850, the Secretary of the Interior, whose department had in the meantime been established, and to which the supervision and control of the general land office had been assigned, reversed the previous decision of the Secretary of the Treasury and determined that the grant did not extend beyond the Raccoon Fork. But he directed that the lands should be reserved from sale which were embraced within the State's selections. The question was then brought before the President, and was referred by him to the Attorney General, who differed with the Secretary of the Interior, and concurred with the Secretary of the Treasury. But before the promulgation of the decision the President (Taylor) died, and a new cabinet coming in—and among others a new Attorney-General—he overruled the decision of his predecessor, and affirmed that of the Secretary of the Interior. The cause was then brought before the new President and Cabinet, and the result is stated by the then Secretary of the Interior, under date of October 29, 1851, which was "that in view of the great conflict of opinion among the executive officers of the Government, and also in view of the opinion of several eminent jurists which had been presented to me in favor of the construction contended for by the State, I am willing to recognize the claim of the State, and to approve of the selections, without prejudice to the rights, if any there be, of other parties." Under this arrangement the Secretary of the Interior approved of the odd sections above the fork as certified, according to the act of Congress, till in December, 1853, the number of acres amounted to over 271,572. On the 21st March, 1856, the Commissioner of the land office again decided that the grant was limited to the Raccoon Fork, and the question was again referred to the Attorney-General, who advised the Secretary of the Interior to acquiesce in the views of his predecessor, (a change having taken place as to the incumbent,) and to continue the approval of the lands as certified to him under the law, which was done accordingly."

All of the facts recited above, together with many others embracing specific notices to the local land officers are fully set out in the Wells-Riley record which by stipulation is made a part of the evidence in this case.

That this reservation was fully operative and had the effect to separate these lands from the great body of the public lands so

that no right of pre-emption could attach to them, is fully and forcibly argued by this court in the Walcott case, from which we again quote :

"It has been argued that these lands had not been reserved by competent authority, and hence that the reservation was nugatory. As we have seen, they were reserved from sale for the special purpose of aiding in the improvement of the Des Moines River, first, by the Secretary of the Treasury, when the land department was under his supervision and control, and again by the Secretary of the Interior, after the establishment of this department, to which the duties were assigned, and afterwards continued by this department, under instructions from the President and cabinet. Besides, if this power was not competent, which we think it was ever since the establishment of the land department, and which has been exercised down to the present time, the grant of 8th August, 1846, carried along with it by necessary implication, not only the power, but the duty of the land office to reserve from sale the lands embraced in the grant. Otherwise its object might be utterly defeated. Hence, immediately upon a grant being made by Congress for any of these public purposes to a State, notice is given by the Commissioner of the land office to the registers and receivers to stop all sales, either public or by private entry. Such notice was given the same day the grant was made, in 1856, for the benefit of these railroads. That there was a dispute existing as to the extent of this grant of 1846 in no way affects the question. The serious conflict of opinion among the public authorities on the subject made it the duty of the land officers to withhold the lands and reserve them to the United States till it was ultimately disposed of."

The act of the officers of the United States in allowing Crilley to file a pre-emption claim to this land in May, 1862, was simply a mistake arising from a misapprehension of facts.

At the time of allowing this Crilley pre-emption the department had not been advised of the fact that all the lands certified to the State, above the raccoon fork of the river, prior to the passage of the joint resolution of March 2nd, 1861, had, in fact, been sold and conveyed by the State and were then held by *bona fide* purchasers from the State.

Upon the discussion of this subject pending the action of Congress upon the joint resolution of 1861, Senator Grimes stated to the Senate that the State of Iowa had sold every foot of these lands to actual settlers and others, and that the language of the

resolution would confirm or relinquish to the State those lands only that had been certified and which the State, placing implicit confidence in that certificate, had conveyed to third parties for a valuable consideration.

But at the time that Crilley's pre-emption was allowed by Secretary Caleb B. Smith, April 10th, 1862, the department was not in possession of the certificates of the Governor of Iowa, and of the Register of the State Land Office, advising them of the fact of these sales and conveyances. These certificates were never called for or furnished to the department until after that date. The certificates are dated July 22, 1862.

See Wells–Riley record, page 191.

This will account for the error committed in allowing this pre-emption. The fact of this joint resolution is recited by Secretary Smith as showing that the certificates were improperly made. Mr. Edmunds, the commissioner, in rejecting Crilley's last application, had stated as his only reason the fact that these certificates constituted an outstanding conveyance, and Secretary Smith reverses this ruling and allows the pre-emption solely on the ground that Congress had, by the joint resolution of 1861, declared that these lands were improperly certified. The fact that this joint resolution at the same time made a grant of these very lands to the State, was not noticed or considered by him, and he seems to have taken it for granted that this tract had not been sold by the State and was not held by a *bona fide* purchaser; at least in his decision he says nothing about it.

See record, page 22.

Afterwards when the department was in full possession of the facts that the State had sold and conveyed these lands, to-wit in the case of David Martz, embracing precisely the same state of facts that we have in the Crilley pre-emption, Secretary Browning decided that the government having parted with its title under

the joint resolution of 1861, that no pre-emption could be allowed on these lands, notwithstanding a settlement prior to that date.

See Wells–Riley record, page 93–4.

We have then these facts:

1st. No claim of pre-emption was ever filed or permitted to be filed against the land in controversy, until after the title of Burrows became absolute under the joint resolution of 1861.

2nd. That the land had been reserved and set apart for a work of public improvement by competent authority and certified to the State before Crilley ever settled on the land or attempted to pre-empt it.

3d. That the settlement of Crilley was made with a full knowledge of the fact that these lands had been so set apart and reserved.

Under these circumstances we conclude, that not only the *title* remained in the United States on the 2d of March, 1861, but that no shadow of right, either legal or equitable, had vested in Crilley at that date.

Wilcox vs. Jackson, 13 Peters, 499.

Chotard vs. Pope, 12 Wheaton, 486.

Suppose we admit for the sake of the argument, that at the time Crilley settled on this tract of land it was subject to pre-emption and sale. What title or vested right could he even in such a case have acquired against the United States? The mere fact of settlement did not divest the United States of its title, nor its absolute

control of the land. It may be true if the executive officers refused, in violation of law, to permit one to prove his settlement and allow him to enter land subject to sale, and wrongfully gave preference to a stranger, the courts might give relief. But the Government of the United States, acting through the law-making power, may at any time before actual purchase, withdraw the land from sale and grant it to whom they please.

This right of pre-emption, so-called, is simply the direction of the statute to the officers of the government, directing them to sell the land to one man (the actual settler) in preference to another. This law is subject to repeal or modification at any time before the purchase is made and the Government parts with its title. And it the Government, by and through the law-making power makes a grant to another before the settler makes his purchase, its legal right so to do cannot be called in question.

See opinions of Attorney-General, Vol. X, Page 56.

We are aware that in the Wells-Riley case this court has decided the very merits of this case, but we are advised by appellant's counsel that he has discovered a difference between that case and this one. The difference is in the names of the parties to the suit and the numbers of the land in controversy.

Riley's patent was dated 15th October, 1863; proof and payment was made 30th May, 1862. Settlement was made on the land in 1855.

In this case the patent bears date September 15, 1866. Entry of the land was made May 5, 1862; settlement on the land commenced in 1855.

In both cases the entries were made and patents issued after plaintiff's title accrued under the joint resolution of 1861, and in both cases the settlements were made in 1855. The decision in the one case ought conclusively to settle the other.

We deem it necessary to notice only one other point in this case. It appears by the record that in 1866, J. A. Harvey was

appointed by the State of Iowa to settle and adjust with the Commissioner of the General Land Office the matter of lands enuring to the State of Iowa under the grant of 1862, and other unadjusted land grants. And that in making that settlement he and the Commissioner chose to regard a portion of the Des Moines river lands certified to the State prior to March 2nd, 1861, and then held by bona fide purchasers from the State, as lands enuring to the State of Iowa under the railroad grant of 1856, and that he obtained from the Secretary of the Interior certificates of other lands in lieu thereof. Whether the land in controversy was so treated by Harvey and the Commissioner, does not clearly appear from the record, but we deem the question immaterial.

If we have any title to this land it is an obsolute title in fee simple enuring to us by virtue of the joint resolution of 1861. Nothing remained to be done by the officers of the Department of the Interior under that grant. The resolution describes the lands as those that had already been approved to the State.

The title thus granted to the State of Iowa *immediately* became vested in its grantees by virtue of the prior conveyances of the State. I need not argue before this court the proposition, that after the title became vested in the individual citizen, the agents of the State and the Register of the General Land Office could not by any act of theirs affect that right. The principle is a fundamental principle in our jurisprudence, and one too firmly established to be shaken or trifled with, that no department of the government can deprive the citizen of his private property. Our lands are not at the mercy of State agents or Commissioners of the General Land Office, who, without any hearing, without any trial, without any compensation to us, engage in the amusement of "now you see it, and now you don't."

It is wholly immaterial to our rights upon what basis that adjustment was made. It may be that the State got more in that adjustment than she was entitled to—and perhaps will relinquish—but by no principle of law or morals, should we be rquired to compensate the General Government for the blunders or folly of

its officers, out of our private property bought and paid for in good faith, and solemnly assured to us by a direct grant by the Congress of the United States. The case is submitted.

C. C. NOURSE,
Solicitor for Burrows.

ADDITIONAL ARGUMENT.

The foregoing argument was prepared by me before seeing the printed brief for appellant. I deem it only necessary to add, in reply to that brief,

1st. As to the question of the statute of limitation of ten years: This suit was commenced April 20, 1868, (*see Record, p. 2*). The deed of the State to the De Moine Navigation Company was executed May 3rd, 1858. The title was confirmed by Joint Resolution of Congress March 2, 1861. The statute of limitations does not begin to run so long as the title is in the State or the United States.

Lidsey v. *Lessees of Miller*, 6 Peters, 666.

The statement of Appellant that Crilley made proof of his settlement June 20, 1860, is not sustained by the record. On the 24th of June, 1860, he applied to file a declaratory statement, *not proof*, and was denied. Oct. 8th, 1860, he offered to enter the land with gold, and was refused.

All his proof is dated in 1862, and he never offered any until *after* the United States parted with its title.

The act of Congress of March 3, 1853, cited by appellant, has no application to this case.

1. The terms of the act is confined to alternative sections along the lines of grants for railroad purposes, to be entered at $2.50 per acre—the *proviso* relates to French, Spanish or

other grants, that is grants made or claimed under grants of foreign governments upon lands within the territory subsequently acquired by the United States, but what is still more fatal to the application of this proviso is that this right of the pre-emptor does not attach until *after the lands shall have been released from such reservation.*

This court has already decided that the reservation of these Des Moines River Lands was legal and proper. After the decision in the Litchfield case these certified lands were still reserved. The reservation was continued by the proper officers of the Government for the sufficient reason that the United States had, by its officers, certified the lands to the State and the State had sold and conveyed to *bona fide* purchasers. For this reason these lands were never released from reservation, but were reserved by express orders of the Secretary of the Interior until Congress could act on the matter. The land in dispute in this case was *certified to the State* and was never proclaimed for sale.

See letter of Secretary—Wells–Riley Record, p. 58.

Congress then, with a full knowledge of the facts, by the Joint Resolution of 1861, released to the State, for the use of its grantees, the legal title still in the General Government without any reservation in behalf of settlers or those who might claim under the pre-emption laws of the United States. The patent is therefore void—the Government had nothing to patent.

C. C. NOURSE,
Solicitor for Burrows.